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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,060	07/25/2003	Sarah Maillefer	2652	4150
7590	09/22/2006		EXAMINER	
STRIKER, STRIKER & STENBY			VAKILI, ZOHREH	
103 East Neck Road			ART UNIT	PAPER NUMBER
Huntington, NY 11743			1614	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/628,060	MAILLEFER ET AL.
	Examiner Zohreh Vakili	Art Unit 1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: ____ .                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/24/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: ____ .                         |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on February 24, 2004 is acknowledged and entered.

### **Status of claims**

Claims 1-27 are pending.

Claims 1-27 are rejected.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "comparatively less sticky" is indefinite because it is unclear that which is less sticky.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (US Patent No. 6582679 B2), in view of Yoshida et al. (US Patent 6649154 B1), in view of Garces Garces (US Patent No. 6733790 B1), and further in view of Krause et al. (US Patent No. 7037488 B2).

Stein et al. teaches the hair wax composition containing at least one wax, one liquid hydrophobic oil (see abstract). The wax product can either be a cup product with a waxy or wax-like consistency or it can be a non aerosol spray product from which a spray or foam is generated from the wax containing composition. This composition is

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preferably a liquid. The hair wax product according to the invention can also be an aerosol spray product (see col. 1, line 64, through col. 2, line 4). A hair wax product containing a sprayable or foamable wax like compositions that comprises of 5 to 60 percent by weight of at least one wax or wax-like substance; from 5 to 35 percent by weight of at least one liquid hydrophobic oil; and from 10 to 80 percent by weight of at least one volatilized hydrophobic substance (see col. 8, line 52-64). Further the reference teaches the emulsifiers are preferably contained in an amount of from 0.5 to 20 percent by weight, preferably from 3 to 15 percent by weight. An addition product of 2 to 30 mol ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; addition products of 1 to 5 mol propylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 1 to 5 mol of propylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 1 to 5 mol propylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; fatty acid mono and diesters having 12 to 22 carbon atoms of addition products of 1 to 30 mol ethylene oxide with glycerol; addition products of 5 to 60 mol of ethylene oxide with castor oil; and monoesters, diesters and trimesters of phosphoric acid and addition products of 2 to 30 mol of ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; or mixtures thereof (see col. 6, line 10-35). Stein et al further teaches wax or wax-like substance that can be used in the composition of the invention. These waxes include animal, vegetable, mineral and synthetic waxes, solid paraffins,

petrolatum (Vaseline®), wool wax, japan wax, caranuba wax, hardened fats, fatty acid esters and fatty acid glycerides with solidification points above 40 degrees C., and silicone waxes (see col. 5, line 35-45). Stein et al teaches that when the hair wax product, the wax containing composition preferably has a liquid, sprayable or foamable consistency at room temperature of 20 degrees C. The waxy or wax like substance is in an amount of from 10 to 30 percent by weight, preferably from 15 to 25 percent by weight. The liquid hydrophobic oil is preferably present in an amount of from 10 to 30 percent by weight, preferably from 15 to 25 percent by weight (see col. 3, line 33-43). Stein et al teaches the amount of emulsifier used 0.5-20 percent by weight (see col. 6, line 14) and wax in the amount of 10-30 percent by weight (see col. 3, line 38). For example 20 percent of emulsifier to 10 percent of wax will have a ratio of 2:1 which is greater than 1 as recited in claims 1, 10, 11, 19. Finally Stein et al. teach styling hair with a hair wax that fixes or set the hair after being styled (see abstract) and since the product is obvious over the above combined references the functionality thereof, less sticky, is obvious.

Yoshida et al. teaches in foamy setting preparation for hairdressing cosmetic 88 percent by weight of water is used (see col. 16, example 16). For gel having hairdressing effect 73.4 percent by weight water is used (see col. 16, example 17). For liquid setting preparation 93 percent by weight water is used (see col. 16, example 18).

Garces Garces teaches suitable organic solvents such as monohydric and/or polyhydric alcohols containing 1 to 6 carbon atoms and preferably 1 to 4 carbon atoms. Preferred alcohols are ethanol, propane-1,2-diol, glycerol and mixtures thereof. The

product preferably contain 2 to 20 percent by weight and more preferably 5 to 15 percent by weight of ethanol or a mixture of ethanol and propane-1,2-diol or, more particularly, of ethanol and glycerol (see col. 17, line 65, through col. 18 line 5) and water such that the water is added and not removed therefore being incorporated into the ultimate product (see example 1) . Such solvents reasonably act as carriers because by their nature are fluid phase (liquid, gas, or plasma) that dissolves a solid, liquid, or gaseous solute, resulting in a solution.

Krause et al. teaches in its invention that the wax is worked into the hair in a softened or more or less liquid state. In the hair it is cooled and again achieves its original consistency. It is hardened and provides stability and hold to the resulting hairstyle (see col. 1, line 22-26). Krause et al. further teaches after application to the hair and the cooling and solidification connected with the application, these hard waxes provide even greater possibilities for hairstyling and hair shaping, since they permit a stiff bundling of hair. This aspect is of great importance for a fashion trend oriented styling product (see col. 2, line 19-24).

It would have been obvious to one skilled in the art to use the teachings of Stein et al. for its hair wax composition using one wax, one liquid hydrophobic oil, an emulsifier to obtain a foamable or sprayable wax, and preferably a liquid composition taken with Yoshida et al. teachings of hairdressing preparation using water as the medium carrier and combined with the teachings of Garces Garces about the use of organic solvents such as monhydric and/or polyhydric alcohols and further with

teachings of Krause et al. for the application of the waxes for greater hairstyling and hair reshaping.

The ranges of these ingredients are within the concentration range as presently claimed in the invention. It would have been obvious to one skilled in the art to use the teachings of Stein et al, Yoshida et al., Garces Garces, and Krause et al. to modify the concentration ranges to come up with a composition for hair wax product to provide better hold of hairstyles.

Therefore, one having ordinary skill in the art at the time of invention was made would have been motivated to use the teachings of the prior arts cited above about the use and making of a liquid or creamy hair wax product as claimed in the present invention.

In the absence of any criticality/unexpected results presently claimed invention is considered *prima facie* obvious over the prior arts for the reasons cited above.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner  
1614

September 1, 2006

*Ardin H. Marschel 9/16/06*  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER